

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

AERO AUTOMATIC SPRINKLER
COMPANY

Employer

and

Case 21-RC-077110

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, LOCAL
UNION 669, U.A., AFL-CIO

Petitioner

**REPORT ON OBJECTIONS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Report¹ contains my recommendations regarding the Petitioner's Objections to the election conducted among the employees of the Employer in the unit agreed appropriate for the purposes of collective bargaining.² The Petitioner's Objections allege that the Employer made threats of a work slow down and threats of futility, and excluded a known Petitioner supporter from a captive audience campaign meeting.³

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² The collective-bargaining unit agreed appropriate in this matter is composed of: "INCLUDED: All full-time and regular part-time sprinkler fitters, including foremen, journeymen and apprentices, employed by the Employer and residing and working in California; EXCLUDED: All other employees, including project managers, sales representatives, office clericals, guards and supervisors as defined in the Act."

³ On August 23, 2012, the Petitioner requested to withdraw Objection Nos. 1, 5 and 6, and the withdrawal request is hereby approved.

As described below, I conclude that the substantial and material factual and legal issues raised by the Petitioner's Objection Nos. 2, 3 and 4 can best be resolved by a hearing, and herein Order and give Notice of such hearing.

Procedural History

The petition in this matter was filed on March 22, 2012.⁴ Pursuant to a Stipulated Election Agreement approved on April 2, an election by secret ballot was conducted by mail between May 3 and May 17, among the employees in the above-noted unit. The tally of ballots served on the parties at the ballot count conducted on May 24, showed that of approximately 28 eligible voters, 4 cast ballots for, and 16 against, the Petitioner. There were zero void ballots and five challenged ballots, which were insufficient in number to affect the results of the election. The Petitioner timely filed objections to the election, a copy of which is attached hereto as Attachment A. The Petitioner's Objections were timely served upon the Employer.

The Objections and Analysis

Objection No. 2

During the critical period, the Employer, through President John Salmen made threats of futility and threats of a work slow down to the employees at a March 27, 2012 meeting of employees at the Camp Pendleton job site.

Objection No. 3

During the critical period, the Employer, through President John Salmen, made threats of futility at a May 3, 2012, meeting of employees at the Cal Poly job site.

Inasmuch as they are related, I will consider Petitioner's Objection Nos. 2 and 3 together. The Petitioner contends that unit employees, hereinafter referred to as Witness A, Witness B, Witness C, Witness D, and Witness E, would testify in support of these objections.

⁴ Unless otherwise specified, all dates herein are in 2012.

With regard to Objection No. 2, the Petitioner contends that Witness A will testify that on or about March 27, at an Employer job site at Marine Corps Base Camp Pendleton, California, Mr. Salmen told employees that the Employer was a nonunion company and would always be a nonunion company. Witness A will further testify that Mr. Salmen told such employees that if the Employer was to become a union company, some of the employees would be sitting at home because they would not be able to get the work.

With regard to Objection No. 2, the Petitioner contends that Witnesses B, C, D and E will testify that on or about May 3, Mr. Salmen told employees that the Employer would always be nonunion and, even if it lost the election, the Employer had plenty of lawyers and would just negotiate for a year and never sign a contract.

For its part, the Employer denies that Mr. Salmen made any such threats to employees, and denies that Mr. Salmen was in California on May 3.

Objection No. 4

On or about May 14, 2012, during the critical period, the Employer, through President John Salmen, held a captive audience meeting with all area foremen. Known union supporter and foreman, Gerald Cox was not invited to the meeting.

In support of Objection No. 4, the Petitioner contends that Witness B will testify that on or about May 14, Mr. Salmen called and told him that there had been a meeting with all other unit foremen, but that the Employer chose not to include him because of the distance from his home to the Employer's office. Witness B will further testify he was not the only foreman who would have had to travel a long distance to that meeting, and that it is his understanding that the Petitioner was discussed at the meeting.

Regarding Objection No. 4, the Employer contends that there is no requirement that all employees be summoned to every campaign meeting that the Employer conducts, even if

the reason for the exclusion is the employees' position on unionization. The Employer also denies that Mr. Salmen was in California on May 14 and that any such meeting was conducted on that date. Additionally, the Employer asserts that Mr. Cox is based at a job site in Northern California, far from the rest of the Employer's California job sites, so it would be reasonable to conduct a meeting with other foreman, which would not include Mr. Cox.

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Petitioner's Objection Nos. 2, 3, and 4 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Petitioner's Objection Nos. 2, 3, and 4.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised by Petitioner's Objection Nos. 2, 3 and 4.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of Petitioner's Objection Nos. 2, 3, and 4. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the hearing officer's report.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on September 12, 2012, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PDT, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on August 28, 2012.

/s/Olivia Garcia
Regional Director
Region 21
National Labor Relations Board